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"Variety is charming" It is an ancient adage and accounts for the beatitude of judge-made law. There is always something new rearing up and in consequence there is a continuous stream of fresh decisions. No less than forty-five judgments of the Judicial Committee alone have been reported in these columns in the course of the year An attempt is here made to indicate the march of law, in some of its main branches.

THE HIGH COURT ITS POWERS AND JURISDICTION.—The scope of the High Court's power to give directions in the nature of *habeas corpus* fell to be considered by the Privy Council in two cases. In *Emperor* v. *Sibnath Banerjee*[1], it is pointed out that though according to English Law, a discharge or an order directing a discharge under a writ of *habeas corpus* is final and not subject to appeal, yet in view of the special terms of section 205 of the Government of India Act, 1935, appeals to the Federal Court from such orders of the High Court will be competent. *King-Emperor* v. *Khwaja Nazir Ahmad*[2], explains that the functions of the police and the judiciary being complementary, the Court cannot interfere with investigation by the police into the circumstances of an alleged cognisable crime and the Court can be invited to give directions in the nature of *habeas corpus* only after its functions begin in regard to the matter, namely, after a charge is preferred before the Court. *Goonesinha* v. *de Kretser*[3], indicates that the High Court cannot and will not issue a writ of *certiorari* to bring up an order made by a Judge of that Court or of a Court of co-ordinate authority. The scope of the power of the High Court to review evidence in an appeal against acquittal is considered in *Nur Mohammad* v. *Emperor*[4], where it is laid down that the High Court can review at large all the evidence upon which an order of acquittal is founded and to reach the conclusion that upon that evidence the order of acquittal should be reversed. The ruling in *Lala Jairamdas* v. *The King-Emperor*[5], decides the important point that the High Court has no power to grant bail pending an appeal by special leave against a conviction from the High Court to His Majesty-in-Council.

THE BAR. ITS RIGHTS, PRIVILEGES AND DUTIES.—In *Parashram Deturam Shamdasani* v *King-Emperor*,[6] it is pointed out that an insult to counsel is very different from an insult to the Court itself and would not amount to a contempt of Court so as to justify the exercise by the Court of its summary jurisdiction regarding contempt. *District Judge of Anantapur* v *Vema Reddi*[7], decides that persons enrolled as advocates of any High Court under the Bar Councils Act are not prohibited from practising in the subordinate Courts of a province notwithstanding that they had been enrolled as advocates by the High Court in some other province. In *Ramanada Mannadiar*

1 (1945) 2 M L J 325 (P C)
2 (1945) 1 M L J 86 (P C)
3 (1945) 2 M L J 314 (P C)
4 (1945) 2 M L J 362 (P C)
5 (1945) 2 M L J 40 (P C)
6 (1945) 2 M L J 109 (P C)
7 (1945) 1 M L J 106 (F B).

v. *Ramaswami Aiyar*[1], the circumstances under which a legal practitioner can be permitted to appear against his former client in the same suit are considered and the rule is laid down that it depends entirely on the discretion of the Court to grant or withhold permission *Devji Goa* v *Tricumji Jiwandas*[2], is a decision of the Judicial Committee indicating *inter alia* that counsel who had assented to the addition of parties cannot be allowed to withdraw his assent after the conclusion of the arguments

CONSTITUTIONAL LAW.—In *Basdeo Agarwalla* v *The King-Emperor*[3], the principle is reiterated that where special statutory powers are conferred and specific provision is made in the statute as to the manner in which the provisions are to be exercised they should be exercised by the authority and in the manner specified in the statute and in strict conformity with the provisions thereof The decision of the Federal Court in *The Bank of Commerce, Ltd , Khulna* v *Kunja Behari Kar*[4], and *The Bank of Commerce, Ltd , Khulna* v *Nripendranath Datta*[5], have in some measure dispelled the element of uncertainty hanging round the validity of provincial legislations like the Bengal Money-lenders Act and the Madras Agriculturists' Relief Act in so far as they affected negotiable instruments The former case states that the validity of a provincial enactment in respect to a matter in the Provincial List is not finally settled by a decision that the legislation is in pith and substance one dealing with such a matter ; that the opening words of section 100 (3) of the Constitution Act 1935 impose a further limitation on the provincial power, namely, that the legislation shall not trench on a federal subject except only incidentally and that such incidental character must be determined with reference to their relation to the subjects mentioned in the Federal List In that view it was held that the provisions of the Bengal Act in so far as it affects claims on promissory notes are beyond the powers of the Provincial Legislature Following these pronouncements a Full Bench of the Madras High Court has held in *Yegnanarayana Somayajulu* v *Subbarayudu*[6], that sections 7, 8, 9 and 13 of the Madras Agriculturists' Relief Act, in so far as they run counter to sections 32, 79 and 80 of the Negotiable Instruments Act relating to promissory notes are *ultra vires* the Madras legislature An authoritative interpretation of the opening words of section 100 (1) and 100 (3)is found in *Governor-General in Council* v *Province of Madras*[7], where it is laid down that the effect of those words is that if the legislative powers of the Federal and Provincial Legislatures enumerated in lists I and II of schedule VII cannot fairly be reconciled, the latter must give way to the former, but that it should be first considered whether a fair reconciliation cannot be effected by giving to the language of the Federal Legislative List a meaning, which, if less wide than it might in another context bear, is yet one that can properly be given to it and equally giving to the language of the Provincial Legislative list a meaning which it can properly bear. In *Basanta Chandra Ghose* v *The King-Emperor*[8], it is ruled by the Federal Court that legislation relating to the efficient prosecution of the war, to wit, the Restriction and Detention Ordinance III of 1943, will be within the ambit of schedule VII to the Constitution Act as connected with " defence," a subject specified in entry 1 of List I The Judicial Committee's pronouncement in *Emperor* v *Sibnath Banerji*[9], brings into prominence the wide language of section 205 of the Constitution Act as relating to both the civil and criminal jurisdiction of the High Court, in consequence whereof an appeal could be taken to the Federal Court against the discharge or order directing discharge under a writ of *habeas corpus* and a further appeal could be taken therefrom to His Majesty in Council Another point decided is that section 49 (2) of the Constitution Act does not limit the operation of that section to matters with respect to which the Provincial Legislature has power to make law but has to be construed as providing an extensible limit and not a maximum limit, and that section 124 (2) of the Act should be understood as affording a means of such extension. Hence such matters as those which fell to be dealt with by the Governor under rule 26

1. (1945) 2 M L J 187
2. (1945) 1 M L J 305 (P C)
3. (1945) 1 M L J 369 (F C)
4. (1945) 1 M L J 24 (F C)
5. (1945) 1 M.L.J. 30 (F.C.).
6. (1945) 1 M L J 339 (F B)
7. (1945) 1 M L J 225 (P C)
8. (1945) 1 M L J 365 (F C)
9. (1945) 2 M.L J 325 (P.C).

of the Defence of India rules could be dealt with by him in the normal manner in which the executive business of the Provincial Government is carried on under the provisions of chapter II, part III of the Constitution Act and in particular under the provisions of section 49 and the rules of business made under section 59 The decision in *Secretary of State* v *J M Lall*[1], holds that the words " except as expressly provided in this Act " in section 240 of the Constitution Act are not to be understood as referring only to provisions of the Act outside the section but are apt enough to include a limitation or qualification on what follows in sub-section 1 by provisions later on found in the same section , so much so, sub-section 3 cannot be read so as to exclude the jurisdiction of the Court to determine whether or not the opportunity to the party affected to show cause against the taking of the suggested action has or has not been reasonable In *Meads* v *King-Emperor*[2], the Federal Court recognises that section 270 of the Constitution Act is capricious in its operation and that it is difficult to make any logical grounds the basis of construing it ; that the words " proceedings civil or criminal " in sub-section 1 do not include court-martial proceedings and that there was no context either in section 270 or elsewhere in the Constitution Act to make the words subsume such proceedings *Suraj Parkash* v. *The King-Emperor*[3], holds that the offence under section 408 or 409 of the Indian Penal Code is not one in respect of which the protection afforded by section 270 of the Constitution Act can be claimed and that in cases to which the section applies it requires that if proceedings be instituted before the sanction is obtained such proceedings are wholly void and fresh proceedings must be instituted after the sanction is obtained In *Manicka Sundara Bhattar* v *R S Nayudu*[4], it is held that section 298 (2) (*b*) of the Constitution Act enacting that nothing therein shall affect the operation of any law which recognises the existence of some right, privilege or disability attaching to members of a community by virtue of any personal law or custom is really a qualification of sub-section 1 which lays down that no subject of His Majesty domiciled in India shall on grounds only of religion, place of birth, descent, colour etc , be ineligible for any office under the Crown or be prohibited on any such grounds from acquiring, holding or disposing of property or carrying on any occupation, trade, business or profession in British India, and has nothing to do with the powers of the Legislature to legislate with regard to religious institutions. In *Umayal Achi* v *Lakshmi Achi*[5], it is held that the effect of section 317 of the Constitution Act is *prima facie* to establish the uninterrupted continuation of the Indian Legislature and its legislative procedure notwithstanding the formal repeal of the existing legislation by section 321 of the Act The judgment of the Judicial Committee in *The King-Emperor* v. *Benoari Lal Sarma*[6], sets out the principle that the question whether an ordinance is *intra vires* or *ultra vires* does not depend on considerations of jurisprudence or of policy but depends simply upon examining the language of the Government of India Act and of comparing the legislative authority conferred on the Governor-General with the provisions of the ordinance by which he is purporting to exercise that authority

CRIMINAL LAW—A wholesome and salutary principle of jurisprudence is recognised in *Alexander Stiologo* v *The King*[7], where it is laid down that if a conviction has resulted from regarding as criminal an act which is authorised by law, that does amount to a breach of natural justice, because it means that there has been a conviction for what the law does not recognise as an offence In *Mahbub Shah* v. *King-Emperor*[8], an authoritative exposition of section 34 of the Indian Penal Code is to be found The Judicial Committee points out that the section lays down a principle of joint liability in the doing of a criminal act and that the essence of the liability is to be found in the existence of a common intention animating the accused leading to the doing of a criminal act in furtherance of such intention ; that the

1 (1945) 2 M L J 270 (F C)
2 (1945) 1 M L J 31 (F C)
3 (1945) 1 M L J 371 (F C)
4 (1945) 1 M L J 372
5 (1945) 1 M L J 108 (F C)
6 (1945) 1 M L J 76 (P C)
7 (1945) 2 M L J 446 (P C)
8 (1945) 2 M.L.J 144 (P C)

intention required need not be "the common intention of all" or "an intention common to all" but only implies a pre-arranged plan in pursuance of which a criminal act is done in concert The ruling in *Pandit Kishori Lal* v *The King-Emperor*[1] explains that though when first enacted the sentence of transportation meant transportation beyond the seas and section 58 of the Indian Penal Code was intended to provide only for temporary detention of prisoners awaiting transportation, still having regard to Acts passed since the Penal Code, regarding the penal system, section 58 can no longer be construed as providing only for the transitory detention of prisoners awaiting conveyance to a penal settlement outside India In re *Jesudas Appadurai Pillai*,[2] reiterates the principle that the bribe-giver is in the position of an accomplice and as a matter of expediency his evidence should be corroborated in material particulars implicating the accused *Suraj Parkash* v. *King-Emperor*[3], lays down that an offence under section 408 or 409 of the Code is not one in respect of which the protection of section 270 of the Government of India Act can be claimed In re *Rami Reddi*[4], points out that since under section 410 property criminally misappropriated is stolen property, there is no logical reason why a man who is in possession of goods soon after they have been criminally misappropriated, if he cannot account for his possession, should be regarded as less likely to have misappropriated them or to have received them knowing them to be stolen than if they had been the subject of theft

EVIDENCE.—Two decisions of the Privy Council on interesting questions relating to the law of evidence fell to be rendered in the course of the year In *Mohamed Sugal* v *The King*,[5] the principle is laid down that once there is admissible evidence it could be acted upon ; corroboration unless required by statute goes only to the weight and value of the evidence In regard to the reception of the unsworn testimony of a child it is pointed out that whereas in English law such evidence must always be corroborated in some material particular implicating the accused, in India, there is no such provision and the evidence is made admissible whether corroborated or not, with the result that though it is a sound rule in practice not to act on the uncorroborated testimony of a child, whether sworn or unsworn, it is only a rule of prudence and not of law *Daniel Youth* v *The King*[6], elucidates two points In the first place the Judicial Committee points out that where there was evidence against the accused on which the jury were entitled to convict, its strength is not a matter for their Lordships to determine unless some step has been taken which is contrary to natural justice or some grave and substantial injustice has been done Secondly, it is made clear that though in all joint trials the mind of the jury may be influenced by the reception of evidence which is only admissible against one of the accused, the practice in England, has always been to admit such evidence leaving it to the presiding Judge to warn the jury that the evidence must not be used to strengthen the case against or to lead to the conviction of the prisoner against whom it is not admissible. *Obanna* v *Gangiah*[7], holds that a statement by a brother of the plaintiff, a person jointly interested in the subject-matter of a litigation, on a former occasion before a revenue officer, on a question of heirship to a deceased person, would be admissible in a later litigation concerning the same question under section 18 (1) of the Evidence Act. In In re *Gangavva*,[8] it is stated that the word "confession" in section 30 cannot reasonably be interpreted to mean a confession of any offence for which the accused persons are being tried but only of the very offence for which they are being tried, the term "offence" always including abetments and attempts The ruling in In re *Rami Reddi*,[4] emphasises that the illustrations to section 114 are not exhaustive and do not restrict the presumptions regarding the existence of facts to the facts covered by the illustrations, but indicate on the

1 (1945) 1 M L J 399 (P C)
2 (1945) 1 M L J 197
3 (1945) 1 M L J 371 (F C).
4 (1945) 1 M.L J 202.
5 (1945) 2 M L J 493 (P C)
6 (1945) 2 M L J 578 (P C)
7 (1945) 1 M L J 378
8 (1945) 2 M L J 479

contrary that, if a question arises as to whether the existence of a particular fact may be presumed, the criterion must be whether the Court thinks it likely to have happened, regard being had to the common course of natural events, human conduct and public and private business in their relation to the facts of the particular case. *Bhupatiraju Ramaraju*, In re[1], brings to the fore the principle, that, since an inference under section 114 that the accused had committed theft, etc, could be drawn only if he is not able to explain his possession where an explanation is called for, no such presumption could be drawn where the accused is a born deaf and dumb mute. The ruling in *Jesudas Appadurai Pillai*, In re,[2] elucidates the useful point that assuming that an accomplice can corroborate himself under section 157, which is highly doubtful, the statement made by him (a bribe-giver) to be admissible must have been made at the time of the event or shortly after when a reasonable opportunity for making it presents itself

TORTS—In *Lala Punnalal* v *Kasturichand Ramji*[3], it is pointed out that there is nothing like an exhaustive classification of torts beyond which Courts should not proceed, that new invasion of rights devised by human ingenuity might give rise to new classes of torts and that malicious house search may constitute a tort. The decision also affirms that the award of exemplary damages in cases where the defendant has acted contumeliously is sanctioned both under English as well as Indian Law In *Subbiah Reddy* v *Jordon*[4], the Privy Council points out that the rule in *Flint* v *Lovell*[5], that an appellate Court will be disinclined to reverse the finding of a trial Judge as to the amount of damages merely because they think that if they had tried the case in the first instance they would have given a lesser sum, cannot apply in its full rigour in British India inasmuch as civil suits are not here tried with a jury and trial Judges have less experience in assessing damages for torts than they have in England, where such claims are very common The decision in *Kandia Goundan* v *Palani Goundan*[6], deals with the interesting question of the liability of a person changing the course of a channel, for damages caused to a neighbouring owner, where the change in the course of the channel was not the primary cause of the damage but an extraordinary rainfall which would have rendered the damage inevitable even if there had been no change of course The principle was laid down that before the plaintiff can succeed in a suit for damages one of the things he should prove is that but for the defendant's act the phenomenon would have passed him scatheless

HINDU LAW—In *Simhadri Raju* v *Satyanarayana Pantulu*,[7] it was held that the Privy Council decision in *Bhagwan Singh* v *Bhagwan Singh*[8], in relation to the rule that the adopted son should bear the reflection of a son did not go beyond the cases of the daughter's son, the sister's son, and the mother's sister's son and therefore the decision in *Minakshi* v *Ramanadha*[9], that there can be no valid adoption unless a legal marriage would have been possible between the person to whom the adoption is made and the mother of the adopted boy in her maiden state, except where there is a custom recognising departures, remains good law, with the result, that the adoption of a boy whose mother in her maiden state and the person for whom the adoption was made were sagotras, was valid, a custom permitting such adoptions being made out The decision in *Subramanian* v *Muthia Chettiar*[10], is far-reaching, in so far as it holds that on adoption by a widower the adoption will take effect as if the son had been adopted in the lifetime of the predeceased wife of the adoptive father, so much so the adopted son will divest all intermediate estates which had vested before his adoption subsequent to the death of the adoptive mother either by inheritance or by a custom of reverter to the parental family of the stridhana of a woman dying sonless

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1 (1945) 2 M L J 407
2 (1945) 1 M L J 197
3 (1945) 2 M L J 461
4 (1945) 2 M L J 257 (P.C)
5 (1935) 1 K B 354
6 (1945) 2 M L J 245
7 (1945) 2 M L J 228
8 (1899) L R 26 I A 153 I L R 21 All. 412 (P C)
9 (1888) I L R 11 Mad 49 (F B)
10 (1945) 2 M L J 337

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One of the points decided in *Nagappa Chettiar* v *Subramaniam*[1] was that a Sudra can marry a dancing girl inasmuch as it would be against public policy to say that a dancing girl shall not marry at all and there is nothing in the Hindu Law operating as an impediment to a Sudra marrying her In *Narayanan Nambudiri* v *Unnimaya Antharjanam*[2], it was held that a promise to pay a particular sum of money or to settle some property in consideration of the promisee marrying the son or daughter of the promisor is valid and enforceable and is not immoral or opposed to public policy *Thangammal* v. *Gengayammal*[3] points out the limits subject to which a right of divorce by reason of custom will be available to Hindus and holds that if custom in a commuunity permitted divorce where both the spouses desired it on account of disagreement between them, such custom will not be illegal

The decision of the Full Bench in *Subbana* v *Balasubbareddi*[4], indicates that the view suggested in *Peddayya* v *Ramalingam*[5] that a co-parcener may renounce his interest in favour of any of the other co-parceners and that the benefit of the renunciation will appertain only to such member is no longer tenable The Full Bench points out that a member of a joint Hindu family governed by the Mitakshara law cannot give his interest in the family estate to one or some of several coparceners only so long as they remain joint in estate but a relinquishment of his interest would operate for the benefit of all the members. *Suryanarayanamurthi* v *Veerraju*[6], reveals the interesting result that the assets reverting to a coparcener on the annulment of his adjudication as insolvent come back to him as joint family property only and not as his separate property The ruling in *Subbareddi* v *Venkataramanayammi*[7], discloses that though the manager of a joint Hindu family cannot revive a time-barred debt so as to affect the other members of the family, he will be competent to renew a debt which will be enforceable by reason of section 4 of the Limitation Act, by the execution of a fresh promissory note on the day the Court reopens with a view to stave off the suit In *Bavani Ammal* v *Nataraja Aiyar*[8], it is made clear that where an endorsee for collection has obtained a decree against the manager on a promissory note executed by him, there is no impediment to the original creditor filing a suit on the original cause of action against the other members of the joint family seeking to make their shares of the family property liable for the debt, provided that the decree already obtained by the endorsee is assigned to the original creditor

In *Mt Inder Kuer* v *Mt Pirthipal Kuer*[9], the Judicial Committee reaffirms the principle that though there is no evidence of actual partition of the joint estate by metes and bounds there can still be a partition, as for instance by the defining of shares, inasmuch as physical division of property is not necessary But as pointed out in *Appavu* v *Manickam Pillai*[10], a partition of some of the assets does not of itself imply a division in status, nor the fact that the income of the agricultural lands is divided, nor the mere fact of the division of the outstandings and moveable property The ruling in *Subbarami Reddy* v *Chenchuraghava Reddy*[11], lays down that a grandfather has no power of imposing a partition so as to effect a severance *inter se* as between his minor grandsons inasmuch as his position is not analogous to that of a father, the latter being the natural guardian of his sons whereas a grandfather cannot be one unless appointed by the Court *Nagappa Chettiar* v *Subramaniam*[1] decides that in a minor's suit for partition what the Court has to decide is whether a partition is in the best interest of the minor; that, while mere speculation in shares by the father may not induce such conclusion the father's illicit relationship with a dancing girl would be another matter

Two decisions relating to the law of debts may be noted The liability of a son by reason of pious obligation to pay a suretyship debt incurred by his father

1 (1945) 1 M L J 452
2 (1945) 1 M L J 145
3 (1945) 1 M L J 299
4 (1945) 1 M L J 140 (F B)
5 (1888) I L R 11 Mad 406
6. (1945) 1 M.L J 292.
7 (1945) 1 M L J 38
8 (1945) 1 M L J 165
9 (1945) 2 M L J 182 (P C)
10 (1945) 2 M L J 504
11 (1945) 1 M L J 151

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is considered in *Kesar Chand* v. *Uttam Chand*[1], where the Privy Council points out that to make the ancestral property liable there must in reality be a debt due by the father, and when the father executed a security bond, not for the payment of any debt due by himself at that time, but for the payment of a debt due by others the doctrine of pious obligation cannot make the transaction binding on the ancestral property *Muthachi* v. *Kandasami Muthirian*[2] holds that when the father of an undivided son executes a mortgage and the mortgagee brings a suit on it against the son after the father's death and the son denies the consideration for the mortgage, the onus of proving consideration is on the mortgagee and no duty is cast on the son to prove want of consideration

The pronouncement of the Federal Court, in *Umayal Achi* v. *Lakshmi Achi*,[3] elucidates that the expression "separate property" may be the antithesis of three other expressions "ancestral property", "coparcenary property" and "joint family property", that the particular sense it bears will depend on the context in which it appears and that the property held by a person as the last surviving co-parcener of a joint family cannot be regarded as "separate property" within the meaning of section 3 (1) of the Hindu Women's Rights to Property Act, 1937, wherein the term refers to property in respect of which the son of the surviving co-parcener would not be entitled to co-parcenary rights but only to a right of inheritance on the father's death if he survived him. The decision also makes it clear that the distribution of the distributable moveable property of a person, wherever they may be situate, is ordinarily governed by the law of the domicile of the owner at the time of his death and that it can make no difference for this purpose whether the law of domicile rests on common law or statute law In *Velayudhan Chetty* v *Commissioner of Income-tax*[4] it is held that where a Hindu father gives his self-acquired property to his son, the latter will take it only as ancestral property, unless it is apparent that the father intended the gift to be made personal to the son *Venkata Veeraraghavayya* v *Sreenivasa Rao*[5], reaffirms the principle that an illegitimate son cannot claim rights of succession to collaterals

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In *Periambala Chettiar* v *Sundarammal*[6] the principle is laid down that the right which a Hindu widow possesses to be maintained out of the property of her deceased husband is not forfeited by conduct which disqualified her from being separately maintained by him, that her right only remains suspended and the suspension ceases when her husband dies Consequently her husband cannot execute a will which can defeat such a right *Venkatappadu* v *Atchayya*[7] deals with a problem that does not often occur It holds that in spite of an illatom son-in-law living jointly with the heirs of his father-in-law, he cannot in the absence of a custom be regarded as a co-parcener with them, so much so his widow cannot found any claim against them for maintenance as the widow of a co-parncener.

The ruling in *Seetha Bai* v. *Narasimha Shet*[8] shows that a guardian may be appointed in respect of co-parcenary property, as for instance, where the co-parcenary consisted of two minors and it was apparent that there was no one who could be in juridical possession of the property as the karta and the wives of the minors' father were quarrelling with each other. The powers of a *de facto* guardian fell to be examined by a Full Bench in *Pundarikakshayya* v *Sreeramulu*[9] and it was held that a *de facto* guardian cannot bind the minor's estate by a promissory note executed by him in the minor's name even in respect of money borrowed for necessary purposes and consequently a sale by him in discharge of such a promissory note which in its turn had been executed to discharge a still earlier debt binding on the minor under a promissory note made by the minor's adoptive father could

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1 (1945) 2 M.L.J 160 (P C)
2 (1945) 1 M L J 207
3 (1945) 1 M L J 108 (F.C)
4 (1945) 1 M L J 149
5 (1945) 1 M L.J. 288
6 (1945) 1 M L J. 58
7 (1945) 1 M L J 134
8 (1945) 1 M L J 60
9 (1945) 2 M L J. 375 (F.B.)

not convey a valid title. It was also held that a *de facto* guardian cannot by executing a promissory note extend the period of limitation in respect of the antecedent debts of the minor's deceased adoptive fathr. *Bapanayya* v *Pundarikakshayya*[1] in applying the principle of the Full Bench decision points out that where an alienation of the minor's property by a *de facto* guardian is set aside the alienee will be accountable for mesne profits from the date when possession was delivered to him.

The decision in *Bishun Singh* v *Thakurji Mangala Nain*[2] recognises that in between the qualified estate which a widow ordinarily takes and the absolute estate which by express conferment she can get, it is possible to bestow on her without conferring an absolute estate full power of transfer over the property which she inherited from the executant as his widow. In *Akkamma* v *Pichamma*[3] it is made clear that when a person puts forward a claim based on a pre-existing estate, and that estate is to some extent recognised by a compromise, the compromise has to be interpreted in the light of the claim put forward and the estate which will pass will be similar to that which was claimed and the Court will not look beyond it except where it contains no clear indication of the title given to the widow. *Shanmughasundaram Pillai* v *Parvathi Ammal*[4] holds that though an alienation by one of two widows, even if it be for a necessity, is not binding on the estate, still the alienation is not void but is only voidable and can be avoided only by the widow or the reversioners and not by third paties. *Dharma Rao* v *Veeriah*[5] deals with a question on which judicial opinion has been conflicting and holds that where a surrender has been made in good faith, the fact that some portion of the family property had passed out of the family by mistake under an involuntary alienation will not make the surrender invalid. The decision also lays down that a surrender by a Hindu widow which was valid at the time it was made cannot become invalid because, subsequent to the surrender, legislation made some other person the nearest reversioner. In *Sethuroyar* v *Karuppayammal*[6] it is pointed out that though a declaration may be for the benefit of a person who turns out to be the ultimate reversioner, the Courts will not entertain a suit by a remote reversioner unless the nearest reversioner had refused to bring such a suit or was colluding with the widow or the alienees or was otherwise incapacitated.

INSOLVENCY LAW.—The decision in *Pathi Gundeppa* v *Official Receiver*[7] lays down that where the Official Receiver applied in the first instance for an order to set aside certain alienations of moveables by the insolvent and after it was ordered applied for an order directing the alienee to pay mesne profits in respect of the items sold such profits could be allowed only for a period of three years before the date of the application. In *Jaina Muhammad Sheriff Maricair* v *Official Assignee*[8] it is pointed out that a suit by a creditor to set aside alienations by the insolvent is not a suit against the property of the insolvent but one against third parties and the object of the suit is to secure such property for the benefit of the general body of creditors and the leave of the insolvency Court is not therefore necessary for bringing such a suit. The ruling in *Official Receiver* v *Gopalakrishnayya*[9] lays down that the decision in *Mahomed Siddique Yousuff* v *Official Assignee of Calcutta*[10] does not apply to orders of adjudication under the Provincial Insolvency Act and therefore an order of adjudication under the latter Act based on an act of the insolvent held by the Court to be one of fraudulent preference does not preclude the transferee from showing by independent proceedings that the transaction did not constitute a fraudulent preference. *Venkata Hanumantha Rao* v *Ramakrishnayya*[11] decides that a suit for the recovery of a sum of money as rent or as damages for the use and occupation of the plaintiff's land by the defendant—the period covered being after the adjudication of the defendant as insolvent— is not affected by section 34 (1) as the claim is in the nature of unliquidated damages, or, by section 34 (2) as the suit years

1 (1945) 2 M L J 508
2 (1945) 1 M L J 91 (P C)
3 (1945) 2 M L J 266
4 (1945) 2 M L J 173.
5 (1945) 1 M L J 423
6 (1945) 2 M.L J 442
7 (1945) 2 M L J 557
8 (1945) 2 M L J 318
9. (1945) 1 M L J 17
10 (1943) 2 M L J 160 (P C)
11 (1945) 1 M L J 379

were after the adjudication. In *Ratnavelu Chettiar* v. *Franciscu Udayar*[1] it is declared that once an adjudication is annulled unconditionally under section 37 it must be taken that there was never any adjudication at all subject only to the exception laid down in section 37. *Suryanarayanamurthi* v. *Veerraju*[2] illustrates an aspect of section 37 when it holds that on reverter under the section on annulment of adjudication of a member of a joint Hindu family, his assets in the hands of the Official Receiver come back to him as joint family property and not as his separate porperty. In *Official Receiver* v. *Neminadha Mudaliar*[3] it is pointed out that the insolvency Court has jurisdiction to pass an order for payment of mesne profits. The ruling in *Subramania Aiyar* v. *Valliamma*[4] lays down that section 68 definitely contemplates the insolvent as a person who might be aggrieved by an act or decision of the receiver and hence his widow as his legal representative will have *locus standi* to apply to have a sale of the insolvent's property by the receiver set aside. In *Velayudha Naicker* v. *Annamalai Chetty*[5] it is explained that in computing the three years' period of limitation which the plaintiff gets under section 19 of the Limitation Act by reason of the acknowledgment of liability in the schedule, the period during which the defendant was an insolvent will have to be excluded and there is nothing in section 78 to preclude that view.

TRANSFER OF PROPERTY ACT.—In *Zafrul Hasan* v. *Farid-ud-din*,[6] it is made clear that persons who have acquired an interest in the property in dispute *pendente lite* could not avail themselves of section 41 or 42 of the Act. *Zogu Rao* v. *Venkatakrishnayya Naidu*,[7] is a decision on the applicability of section 43 and lays down that there is no duty cast on a vendee to make any enquiries to which section 43 applies and mere notice of encumbrances on the part of the vendee would not make the transaction of sale any the less a sale free of encumbrances, if the document says so. The decision also makes it clear that before the section can apply it is essential that there should be a misrepresentation, fraudulent or erroneous, about the right to transfer property. The ruling in *Duraiswami Reddi* v. *Angappa Reddi*[8], lays down that under section 48 where there are two registered sale deeds in respect of the same property, that which was first executed has priority over the other though the latter might have been registered earlier. In *Kulandaivelu Pillai* v. *Sowbhagyammal*[9] it is held that there is no conflict between sections 52 and 100 and that section 52 expressly provides for all cases of decrees in suits relating to immoveable property whether involving a mortgage or charge or recovery of possession by enacting that no party to the suit can transfer or deal with the property so as to affect any other party thereto under any decree or order which may be made therein. Nor does the section make any exception in favour of a *bona fide* transferee for value with notice. *Nallakumara Goundan* v. *Pappayi Ammal*[10] completes the picture by indicating that the explanation added to section 52 by the Amending Act of 1939 has made it clear that the doctrine of *lis pendens* applies to all alienations made from the date of the plaint itself. *Rajagopala Chetty* v. *Kesava Pillai*[11] reaffirms the view that section 100 cannot be read without regard to what is contained in section 52. In *Venkatappa Naidu* v. *Chinnappa Naidu*[12], the view is repeated that section 53-A has no retrospective operation. In *Paparao* v. *Polinaidu*[13] it is explained that the fact of a buyer's knowledge of a defect in the seller's title prior to the purchase does not prevent him from suing for damages for breach of the covenant of title and that where several items of properties are sold and the purchaser sues for recovery of damages for breach of covenant of title in respect of one item, he can have the contract rescinded as regards that one item only. *Somu Achari* v. *Singara Achari*[14] points out that the mere execution of a promissory note for the amount of the unpaid purchase money is not a contract to the contrary within the meaning of

1. (1945) 1 M.L.J. 472.
2. (1945) 1 M.L.J. 292.
3. (1945) 1 M.L.J. 469.
4. (1945) 1 M.L.J. 315.
5. (1945) 1 M.L.J. 298.
6. (1945) 1 M.L.J. 12 (P.C.)
7. (1945) 2 M.L.J. 478.
8. (1945) 1 M.L.J. 425.
9. (1945) 1 M.L.J. 261.
10. (1945) 2 M.L.J. 72.
11. (1945) 1 M.L.J. 57.
12. (1945) 1 M.L.J. 158.
13. (1945) 1 M.L.J. 323.
14. (1945) 2 M.L.J. 17.

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section 55. *Sivaramayya* v *Venkayya*[1] recognises that the contract to the contrary contemplated in section 56 need not be express but may be implied In *Matapalli Raju* v *Venkataraghavayya*[2], it is recognised that section 60 does not override the provisions of Order 23, rule 1 (3) of the Civil Procedure Code The decision in *Ramakrishna Naidu* v *Venkataswami Naidu*[3], lays down that a person who pays off a prior mortgage as part of a sale transaction though before the execution of the sale deed will be a person having an interest within the meaning of section 91 in regard to the mortgage paid off, on the sale failing to take effect The judgment of the Judicial Committee in *Lala Man Mohan Das* v *Janki Prasad*[4], states firstly that a mere volunteer discharging a mortgage debt binding on the property could not claim subrogation ; secondly, that even prior to the amendment of section 92 in 1929, to support the claim for subrogation of one who has lent money to a mortgagor to redeem a mortgage, an agreement express or implied that the lender shall be subrogated should be proved ; and lastly, that after the amendment of the Act the right of subrogation can be claimed by the lender only if the mortgagor has by a registered instrument agreed that he shall be subrogated and such relief can no longer be claimed or granted on very slight evidence of what may be described as the semblance of an agreement. *Venkatachala Pillai* v. *Rajagopala Naidu*[5], points out that the words " by operation of law " occurring in section 100 include a charge brought into being by a decree of a competent Court. The decision of the Privy Council in *Ramachandra Jiwaji* v *Laxman Shrinivas*,[6] indicates that though a gift may be induced by undue influence it does not necessarily follow that it was not made " voluntarily " within the meaning of section 122

LAND ACQUISITION.—The ruling of the Full Bench in *Suryanarayana* v *Province of Madras*,[7] deals with the scope of section 6 of the Land Acquisition Act It lays down that a declaration under section 6 (1) is final and it is not open to the Court to inquire whether the land was really needed for a public purpose ; that a suit would no doubt lie if the government directed the acquisition in fraud of its powers but in the absence of any such charge the government's action in directing the acquisition cannot be challenged in a Court of law and it is sufficient compliance with the provisions of the proviso to section 6 (1) if any part of the compensation, even if it be an anna, is paid out of the public fund

LAND TENURES AND IRRIGATION LAW—In *Secretary of State* v *Krishna Rao*,[8] the Judicial Committee points out that a grant of shrotriem inam may be of either the revenue from the land only—the melvaram—or of the proprietary rights also, namely, the rights which the government had in the land ; that where the original a grant gave only the melvaram, the subsequent proceedings of the inam commission . and the title granted by them will not change its character , and that where no sanad is produced, the inam title deed and the entries in the inam register are evidence and indeed the best evidence of the true character of the grant The decision also lays down that a grant of the proprietary interest includes the grantor's right in tanks, river and channel porambokes. *Venkata Kotayya Sastri* v *Province of Madras*[9] holds following the *Swamigal case*[10] that in the case of a whole inam village there is a presumption that the grant comprises the bed and banks of any irrigation channel passing through the village, so far as its course lies in such village, and that if the government relied on a reservation of the right in the channel it is for them to allege and prove it ; that neither the fact that the channel 35 miles in length passed first through a number of government villages and then for a mile only flowed through the inam village again passing through other government villages nor the circumstance that at the time of the inam grant the lands of the village were dry would rebut the presumption of the bed of the channel being included in the grant. In *Sri*

1 (1945) 2 M L J 412
2. (1945) 1 M L J 212
3 (1945) 1 M L J 154
4. (1945) 1 M L J 97 (P C)
5 (1945) 2 M L J 388
6 (1945) 1 M L J 253 (P C)
7 (1945) 2 M L J 237 (F B)
8 (1945) 2 M L J 352 (P C)
9 (1945) 2 M L J 250
10 (1942) 2 M L J 367 (P C)

Ekambareswaraswami Temple v. *Provincial Government of Madras*,[1] it is pointed out that a tank wholly situate within an inam village as well as that portion of the channel feeding the tank which lies wholly within the village would pass to the inamdar unless there is something in the circumstances of the case suggesting a reservation by the government in its own favour of the particular tank or channel. It is further pointed out that the cultivation of more lands or the raising of a second crop by the inamdar by thrifty user of water in the tank will not justify the levy of irrigation cess, so long as the feeder channel was not interfered with at its entry into the village or above and that the mere fact that the storage capacity of the tank has been increased by either strengthening the bank or increasing the height of the tank bund is no ground for the levy of water cess

ESTATES LAND ACT —In *Seshagiri Rao* v *Rammayya*[2], it is laid down that what had been made an estate by reason of section 3 (2) (*b*) and (*e*) could not have been intended to be stripped of its character by the definition of " ryoti land " in section 3 (16) and that it is only where the lands are held under a tenure which the landholder can put an end to by a unilateral act of his own, that the tenant having possession does not possess occupancy rights therein, but not where the lands are held under a tenure which cannot be terminated by the landlord. The ruling in *Vidya Sankara Bharathi Swamivaru* v. *Ramamurthi*[3] points out that the Explanation 1 to section 3 (2) (*d*) added by section 2 of Madras Act II of 1945 is not only retrospective but also expropriatory *Rajayya Nandiar* v. *Laxmana Ayyar*,[4] holds *inter alia* that the proviso to section 3 (10) (*b*) (iv) will apply only where the kudivaram was acquired by a landlord at a sale for arrears of rent, that is, at a sale held by a Court or revenue officer acting under the powers conferred by law and not a private sale by the owner of the kudivaram The decision further indicates that the conversion of private land into ryoti land may be by express grant or possibly by leasing them along with admittedly ryoti lands under a single patta with terms which are inconsistent with the landlord's absolute right in them In *Vaidyanatha Mudaliar* v. *Vedachala Mudaliar*,[5] it is pointed out that the mere fact that a person who happens to be a ryot is under an obligation to pay some amounts to a landholder in respect of certain non-ryoti lands in the estate does not make the amounts " rent " within the meaning of section 3 (11) *Sethu Chettiar* v *Sarangapani Aiyangar*,[6] decides that padugai lands even if not part of the river bed may be part of the river bank, in which case also the land would not be comprised within the definition of ryoti land in section 3 (16) In *Yellayya* v *Pydamma*,[7] it is held that section 145 does not prevent a landholder from recognising any person's claim to have a right to property by devolution of interest and does not provide for a quasi-judicial inquiry by him *Ahmed Batcha Sahib* v *Mohamed Haneef Sahib*,[8] reiterates that section 145 as amended in 1934 is not retrospective In *Sarvarayudu* v *Venkataratnam*,[9] it is laid down that section 192 making applicable the provisions of the Civil Procedure Code must be read subject to section 132 which makes chapter VI of the Estates Land Act applicable to execution by a revenue Court thereby providing a complete code of procedure

TRUSTS —In *Ramanathan Chettiar* v *Palaniappa Chettiar*,[10] it is pointed out that an intention to create a trust and transfer of property are equally essential for public as well as private trusts, hence, a mere credit entry in the account books of a firm without setting aside and appropriating the sum credited is not sufficient to create a valid trust The principle is also stated in *Nemathanpatti Annadhana Chatram* v. *Raman Chettiar*,[11] where it is held that mere credit entries in one's own account are not sufficient to create a trust unless corresponding sums are actually set apart and appropriated to the charities, so much so, the mere fact that the expenses relating

1 (1945) 1 M L J. 317
2 (1945) 2 M L J 214
3 (1945) 2 M L J 207
4 (1945) 2 M L J 148
5 (1945) 2 M L J 312
6. (1945) 2 M L J 380.
7 (1945) 1 M L J 42
8 (1945) 2 M L J 158
9 (1945) 1 M L J 332
10 (1945) 2 M L J 164
11 (1945) 2 M L J 525

to the construction of a building were debited by a testator in his lifetime in a folio headed "chatram building account" cannot be taken as showing that such expenses came out of any trust fund so as to make the building the property of the trust In *Man Mohan Das* v *Janki Prasad*,[1] the Privy Council points out that where the administration of a trust is vested in co-trustees they must execute the duties of the office collectively in a joint capacity and the execution by one of them of a conveyance even during an emergency would be ineffective in conveying a valid claim to the property. The ruling in *Sri Vedapuriswarar Temple* v *Sundaresa Gurukkal*,[2] recognises that a decree can be validly passed against a *de facto* trustee of a temple who is in possession and management thereof so as to bind the temple

CONTRACTS —In *Venkatappayya* v *Venkatappayya*,[3] it is held that as section 25 (3) of the Contract Act is based on agreement, no claim can be founded on the provision where no agreement exists The scope of the words "when the contract becomes void" in section 65 fell to be examined in *Venkatappa Naidu* v *Chinnappa Naidu*,[4] where it is held that "void" means unenforceable by substantive law and not unenforceable by reason of procedural regulations such as the Limitation Act *Suryanarayana* v. *Purnachandra Row*,[5] holds that the principle of section 72 will apply so as to enable a person to recover the sum paid by him as purchaser of a property subject to a mortgage, in the *bona fide* belief that the mortgage was valid, from the mortgagee, on the mortgage being found invalid later consequent on the mortgagor's title to the property being negatived In *Samuel Fitz & Co* v *Standard Cotton & Silk Weaving Co*,[6] where a contract for the supply of goods at Madras according to specification, for the purpose of sale in Australia, was terminated by the defendants on a prohibition by the Australian government of the importation of such goods into that country, and an action for the recovery of damages was brought, it was held that the Court could not read into the contract an implied term that its enforceability was to be dependent upon the ability of the defendants to find customers for the goods, that such a term was not of the foundation of the contract and that in such a case the measure of damages is the profit which the plaintiff would have made had the contract been carried out The scope of the doctrine of "frustration" is elucidated in *Twentsche Overseas Trading Corporation, Ltd* v *Uganda Sugar Factory, Ltd*,[7] where Lord Wright observed "The word 'frustration' is used in a technical legal sense. It is a sort of shorthand, it means that a contract has ceased to bind the parties because the common basis on which by mutual undertaking it was based has failed It would be more accurate to say not that the contract has been frustrated but that there has been a failure of what in the contemplation of both parties would be the essential condition or purpose of the performance" In *Ranganatha Iyer* v *Indo Union Assurance Co*, *Ltd.*,[8] the principle is recognised that where there is a mere contract of agency, with no service or subordination, the Court will hold that there is no implied contract that the agent is to be supplied with the means of earning his commission and hence where the principal company on the advice of experts was run as a "closed fund" taking on no new business the agent cannot recover damages because of the company not running for the period certain for which he was employed as agent The difference between authority to sell and authority to find a purchaser is examined in *Appa Rao* v *Gopal Das*,[9] where it is held that if an agent is authorised to negotiate and complete a sale for a specified price within a particular time it gives him authority to enter into a contract for a sale whether it be for immoveable or moveable property *Sokrabji* v *Oriental Government Security Life Assurance Company, Ltd*,[10] recognises that *prima facie* the right of an agent to commission ceases on the termination of his employment except in cases in which the whole of the work necessary to earn the commission has been done by the agent before the termination of his employment.

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1 (1945) 1 M L J. 97 (P C)
2 (1945) 2 M L J 399
3. (1945) 2 M L J. 405
4 (1945) 1 M L J. 158
5 (1945) 2 M.L J 513
6 (1945) 2 M L J 24
7 (1945) 1 M L J. 417 (P C)
8 (1945) 2 M L J 297
9. (1945) 2 M L J 363
10 (1945) 2 M L J 297 (P C)

In *Periambala Chettiar* v. *Muhammad Ghouse Saheb*[1], it is pointed out that though there was no provision in the Indian Contract Act corresponding to section 22 of the Partnership Act, that section has not effected any change in the law and the principle has always operated that the act of a partner in order to bind the firm should be done on behalf of the firm but that it is not necessary that it should also purport to be so done *Sundaram Chettiar* v *Ittimathu*[2], decides that section 69 of the Partnership Act only prohibits a suit by the members of an unregistered firm and that, where a suit is filed against certain persons who carry on business as a firm without getting themselves registered and a decree is passed, they are entitled to appeal and their being an unregistered firm is no bar to the exercise of such right

SPECIFIC RELIEF —In *Satyanarayanamurthi* v *Venkata Pichaiah*[3], it is decided that in decreeing a suit for specific performance of an agreement by the defendants to execute in plaintiff's favour a mortgage of immoveable properties to secure the moneys lent to them it will not be proper to pass a mortgage decree. *Murugappa Naicker* v *Padmanabha Mudaliar*,[4] holds that section 9 of the Specific Relief Act does not preclude a party to a suit under that section from subsequently putting forward his title by virtue of long possession, as the only finding in the summary suit which will be conclusive will be that the plaintiff was not in possession within six months of that suit In *Subbarayulu* v. *Annamalai*[5], it is held that a plaintiff cannot obtain specific restitution of a chattel unless his claim falls within section 11 (*a*) and that where the defendant held it on behalf of the plaintiff with a duty to deliver it back, the article is held in a fiduciary character sufficient to satisfy section 11.

NEGOTIABLE INSTRUMENTS —In *The Bank of Commerce, Ltd*, *Khulna* v *Kunja Behari Kar*,[6] the Federal Court points out that non-negotiable promissory notes are known to the law and are recognised by the Negotiable Instruments Act *Rangaraju* v *Sait Devichand Bhootaji Firm*,[7] lays down that as section 27 of the Negotiable Instruments Act involves the consequence that so far as making, drawing, etc , of a promissory note, etc , are concerned, those acts must in order to bind the firm, be done by a partner in the name of the firm and it is not sufficient that they are done in any other manner expressing or implying an intention to bind the firm, the description of the executant in the preamble to the promissory note as a partner of a named firm is perfectly consistent with his executing the note as the party liable thereon and cannot be construed as disclosing the name of the firm as the party liable on the note

COMPANY LAW —In *Damodara Reddi* v *Indian National Agencies*,[8] it is pointed out that, if the names of members have been improperly added to the register of members, the remedy of the company is to apply to the Court under section 38 for rectification and not to alter the register itself *Lyallpur Bank, Ltd* v. *Ramji Das*,[9] lays down that a company which has obtained in its favour an order under section 186 (1) of the Companies Act and had applied for its execution and not obtained satisfaction is entitled to apply and claim under section 73 (1) of the Civil Procedure Code a share in the rateable distribution of the assets of the contributory concerned

CIVIL PROCEDURE CODE —In *Krishna Mudaliar* v *Sabapathy Mudaliar*,[10] it is recognised that the power given by section 24 to the High Court to transfer a suit to that Court and afterwards re-transfer it for trial to the Court in which it was originally filed can be exercised only after giving notice to the parties and giving them an opportunity to be heard. *Jagannath Sowcar* v *Sripathibabu Naidu*[11], lays down that the discretion of the Court under section 34 to order interest at such rate as it deems reasonable is entirely unfettered, with the exception that it cannot grant interest on costs at a higher rate than six per cent The decision of the Privy Council in *Lyallpur Bank, Ltd* v *Ramji Das*,[9] lays down the important point that the provisions of section 36 imply that section 73 can be deemed to apply to the exe-

1 (1945) 1 M L J 279
2 (1945) 1 M L J 278
3 (1945) 2 M L J 383
4 (1945) 1 M L J 206
5 (1945) 1 M L J 460
6 (1945) 1 M.L J 24 (F C)
7 (1945) 2 M L J 113
8 (1945) 2 M L J 432
9 (1945) 1 M L J 309 (P C.).
10 (1945) 1 M L J 14 (F B).
11 (1945) 1 M L J 478.

cution of an order made under section 186 of the Companies Act. In *Bagyalakshmi Ammal* v *Bappu Aiyar,*[1] it is pointed out that having regard to the decision in *Bapanna Garu* v *Jagga Rao Garu,*[2] the view that the words "parties to the suit" in section 47 do not necessarily mean between parties who are plaintiff and defendant respectively in the suit cannot be accepted, and it is therefore necessary that there should have been a conflict in the suit between the parties in order that the decision of the question arising between them in execution could come under section 47. *Ramanatha Aiyar* v. *Abdul Salam Sahib*[3] holds that a claim by a judgment-debtor, in execution, for compensation for waste committed by a usufructuary mortgagee-decree-holder is within the scope of section 47 A useful point in relation to section 48 emerges in *Nacharammal* v. *Veerappa Chettiar,*[4] which decides that the words "the decree sought to be executed" in the section refer to the decree of the appellate Court even though it confirms the decree of the original Court and the period of twelve years should be computed from the date of the appellate decree An important point was decided in *Venkanna* v *Kotayya,*[5] where it is held that though as a general rule a plea of fraud has to be raised at the earliest stage of the proceedings and all that has to be said should be said fully and at once, yet different considerations arise when applying the provisions of section 48 as the latter sets a time limit on execution and such limit should not be allowed to prevail where the conduct of the judgment-debtor is such as to have prevented the execution of the decree within twelve years In *Suryanarayana* v. *Nageswara Rao,*[6] it is held that there is no difference in principle between section 49, Civil Procedure Code, and section 132 of the Transfer of Property Act and that a transferee shall take the decree subject to the equities which the judgment-debtor might have enforced against the assignor whether the transferee had any knowledge of them or not. *Venkataraghava Rao* v *Hanumantha Rao,*[7] decides that when once the Court has sent the decree to the Collector for action under section 54 the matter passes entirely out of its hands and when the Collector acts under the section he is performing a statutory duty and is not under the control of the Court, but that does not mean that a person aggrieved by the partition effected by the Collector is without a remedy, for he can move the Board of Revenue to revise the Collector's order. *Venkayya* v. *Tatayya,*[8] deals with a point which often arises, and holds that it cannot be said that because an agriculturist has a shed in or near his field he cannot get exemption under section 60 (1) (*c*) for the house in which he ordinarily resides unless he has proved that he has tethered some cattle in the house or has kept some agricultural implements there *Imperial Bank of India* v *Balasubramania Pandia Tevar,*[9] points out that there can be said to be "receipt of assets" within the meaning of section 73 in a case where the custody Court and the executing Court are the same, only if the Court has as custody Court come to the conclusion that there is no objection to transfer the amount necessary to pay the decree-holder at whose instance the fund was attached and has passed an order as custody Court transferring the amount to the credit of the first attaching creditor's suit which it is engaged in executing. In *Meenakshi Amma* v *The Province of Madras,*[10] it is held that the particulars required by section 80 should be accurately given and that a wrong description therein of property would be not an insubstantial but fundamental error and in the absence of evidence that the error was *bona fide* and accidental will preclude the maintainability of the suit *Ramamurthi Iyer* v *Meenakshisundarammal,*[11] decide, that section 115 is wide enough to empower a Court to dismiss a revision petition for default of appearance. It also lays down that section 151 does not confer on the Court the power to exercise a jurisdiction it has not otherwise got In *Ankamma*

1. (1945) 2 M L J 567
2. (1943) 1 M L J 271.
3. (1945) 1 M L J 67.
4. (1945) 2 M L J 197.
5. (1945) 2 M L J 564.
6. (1945) 1 M.L J. 438.
7. (1945) 2 M L J 62 (F B)
8. (1945) 1 M L J 211
9. (1945) 2 M L J. 49
10. (1945) 2 M L J 387.
11. (1945) 1 M L J 4.

v. *Punnayya*[1], it is ruled that section 144 will be applicable and restitution ordered provided a decree is varied or reversed, however the variance or reversal has been effected, and that in cases not falling strictly within the section restitution can be ordered under the Court's inherent powers The decision in *Chinna Basava Satyanarayana* v. *H R E Board*,[2] suggests that where a pleader who was authorised to appear for the appellant was not present in Court, the Court is bound to treat the appeal as one where the party was absent and dismiss it for default *Ramamurthi Iyer* v. *Meenakshisundarammal*[3] reiterates that Order 9, rule 9 is not applicable to revision petitions In *Subbiah* v *Kotamma*[4] it is held that the only remedy open to the plaintiff in a suit for possession with mense profits, where possession is decreed with past mesne profits leaving the question of future profits open, and no enquiry is ordered under Order 20, rule 12, is to file a separate suit for the future profits and not come by way of a separate application under the rule. In *Madan Theatres* v *Dinshaw & Co*[5], the Judicial Committee makes it clear that Order 21, rule 2 only applies in execution and as execution does not begin until after a final order for sale has been passed the rule has no application when the question is whether or no a final decree for sale should be passed. *Abdul Subhan Sahib* v *Ramanna*[6] points out that it is not open to a judgment-debtor or to any one standing in his shoes to plead an uncertified adjustment of a decree by way of defence to a suit by an auction-purchaser in execution of that decree for possession. *Perumal Chettiar* v *Kotayya*[7] holds that the transfer of a decree to another Court for execution comes into effect from the date when the order of transfer is made and the transferee-Court can thereafter entertain an application for execution though a copy of the decree has not been received by it In *Sabapathy Chettiar* v. *Lakshmanan Chettiar*[8], the view is expressed that no notice need be issued under Order 21 rule 16 on those persons against whom the decree was not going to be executed and who were not interested in the execution proceedings. In *Rangayya* v *Nagapothu Rao*[9] it is pointed out that Order 21, rule 49 is inapplicable where there was no partnership in existence as such at the time of the suit or at the time of the application for execution In *Naganna Naidu* v. *Venkataraghavulu Naidu*[10] it is decided that the omission to affix the sale proclamation in the Collector's office as prescribed by Order 21, rule 54 read with rule 67 would indeed be a material irregularity within the meaning of the rule A Full Bench has, in *Narasimhachariar* v *Raghava Padayachi*,[11] held that Order 21, rule 58 only applies to a claim preferred or objection made to an order of attachment in the particular execution proceedings and hence an order passed thereon cannot be said to be conclusive for all purposes inside and outside the particular execution proceedings. The implications of order 21, rule 66 are considered by the Privy Council in *Marudanayagam Pillai* v *Manickavasakam Chettiar*[12] It is there explained that rule 66 imposes on the Court the duty of causing a proclamation of sale to be made which must *inter alia* specify the encumbrance to which the property is liable, that the Court should bring its mind to bear on the contents of the proclamation and not act blindly on information supplied and that apart from the duty cast on the Court the applicant for sale or some one on his behalf has to file a verified statement containing the matters required by sub-rule 2 to be specified in the proclamation which are either known to or could be ascertained by him *Kannathal Achi* v *Vaduganathan Chettiar*,[13] holds that for purposes of rule 71 of Order 21, the word "decree-holder" includes an assignee-decree-holder In *Hanumayya* v *Chinna Bapanayya*[14] it is pointed out that Order 21, rule 89 does not involve the personal attendance of the judgment-debtor when paying the deposit under the rule and that the judgment-debtor can act through an agent without giving him any power of attorney In *Naganna*

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1 (1945) 1 M.L J 386
2 (1945) 1 M L J 331
3 (1945) 1 M L J 4
4 (1945) 1 M L J 204
5 (1945) 2 M L J 367 (P C)
6 (1945) 1 M L J 245 (F B)
7 (1945) 2 M L J 555
8 (1945) 2 M L J 22
9 (1945) 2 M L J 531
10 (1945) 2 M L J 259 (P C).
11 (1945) 2 M L J 89 (F B).
12 (1945) 1 M L J 229 (P C)
13 (1945) 1 M L J 322
14 (1945) 1 M L J 66

Naidu v *Venkatarayulu Naidu*[1] the Judicial Committee points out that upon the language of the proviso in Order 21 rule 90 what is required is that the Court should be satisfied that the applicant to set aside the sale has suffered substantial injury by reason of material irregularity or fraud and if the Court is so satisfied from the facts proved then the applicant may be said to have discharged his burden This burden may be discharged not only by direct evidence connecting the irregularity or fraud with the subsequent injury but also by circumstantial evidence. Omission to state in the proclamation of sale the revenue on an estate or part of an estate paying revenue to government as required by Order 21, rule 66 (2) (*b*) would be ordinarily such material irregularity. *Marudanayagam Pillai* v *Manickavasakam Chettiar*[2] is another pronouncement of the Judicial Committee holding that where a sale takes place at a serious undervalue occasioned by failure on the part of the Court and the decree-holder to carry out their obligations under Order 21, rule 66 in regard to the fixing of the proper value of the properties to be sold after allowing for the correct amount due under a prior charge, the judgment-debtor sustains a substantial injury within the meaning of rule 90 and the sale has to be set aside however dilatory or unsatisfactory his conduct may have been if he has not otherwise debarred himself of the right to have it set aside *Ramakrishna Reddi* v. *Veera Reddi*[3] points out that the plaintiff's right at any time after the institution of the suit to abandon any part of his claim does not require permission of the Court, nor does it require an application for amendment of the plaint ; he has only to intimate it to the Court. *Matapalli Raju* v *Venkata Raghavayya*[4] holds that the provisions of Order 21, rule 1 (3) are not over-ridden by section 60 of the Transfer of Property Act In *Madan Theatres* v *Dinshaw & Co*,[5] the Privy Council takes the view that though a decree-holder need not agree to any adjustment or accept payment otherwise than into Court, it is open to the debtor to allege and prove that an adjustment has taken place or payment in whole or in part has been made and received and that there is nothing to qualify the wide terms of Order 23, rule 3 nor any grounds for limiting its application *Chellammal* v *Muthulaskshmi Ammal*[6] emphasises that under Order 33 rule 2 read with rule 5 (*a*) it is the duty of the petitioner to make a full and accurate verified statement of his or her properties In *Gopalaswami Naick* v *The Province of Madras*[7] it is decided that Order 33, rule 10 does not mean that the first charge referred to therein shall be only on the subject-matter of the suit which the party ordered to pay costs has recovered and that the provision that there shall be a first charge on the subject-matter of the suit is a distinct provision. *Rajamayyer* v *Venkatasubba Iyer*[8] holds that Order 34 rule 5 (3) contemplates the normal case where a mortgagee who sues to enforce his mortgage is assumed to apply for a final decree on default of payment by the mortgagor but it is not correct to read the rule as implying that none else shall have the right to make an application for a final decree in case of the mortgagor's default In *Angammal* v *Muhammad Sulaiman Lebbai*[9] the important point is laid down that where a mortgagor under a usufructuary mortgage has not paid the amount within the time fixed for payment in the preliminary decree for redemption and has not asked for extension of time under Order 34, rule 7 (2) but later on deposits the amount and applies for the passing of a final decree with a direction to deliver the mortgaged property the application is not precluded as the mortgagor is not bound to take out an application within three years of the preliminary decree and is entitled to deposit the amount so long as the final decree was not passed In *Sanyasappa Rao* v *Pappi Naidu*[10] it is held that Order 34, rule 13 which lays the method of appropriation of realisations under a mortgage decree applies not merely to a case where a property is sold with the consent of the prior mortgagee but also to cases where there is no prior mortgagee to consider and provide for, as for instance, where there is more than one mortgagor and the moneys

1 (1945) 2 M L J 259 (P C)
2 (1945) 1 M L J 229 (P C)
3 (1945) 2 M L J 473
4 (1945) 1 M L J 212
5 (1945) 2 M.L J 367 (P C)
6 (1945) 1 M L J 53
7 (1945) 2 M L J 140
8 (1945) 2 M L J 122
9 (1945) 2 M L J 239
10. (1945) 1 M L J 430

realised are from properties comprised in the mortgage and belonging to one or few only among them *Jami Kurmanna*, In re[1], holds that the power of dispensation contained in Order 41, rule 1 does not extend to appeals presented to the High Court for which special provision had been made by the amendment of the rules. This view has not been accepted in *Rayalla Ramappa*, In re[2]

CRIMINAL PROCEDURE CODE.—The decision of the Judicial Committee in *King-Emperor* v *Khwaja Nazir Ahmad*[3] establishes that the receipt and recording of a first information report is not a condition precedent to the setting in motion of a criminal investigation though in a majority of cases prosecutions are undertaken as a result of information received and recorded in that way, for there is no reason why the police, if in possession through their own knowledge or by means of credible though informal intelligence genuinely leading them to the belief that a cognisable offence has been committed, should not of their own motion investigate It also points out that it is the duty of a Criminal Court when a prosecution for a crime takes place before it to form its own views and not to reach its conclusion by reference to any previous decision which is not binding on it such as to the findings in a civil proceeding A salutary principle is laid down in *Seshu Iyer*, In re[4], where it is stated that the plea of *autrefois acquit* will be sustained where the appellate Court had directed a re-trial after certain persons had been either discharged or acquitted after trial, on the ground that the enactment under which the trial was held was *ultra vires*, and subsequently the Privy Council held that the enactment was valid The ruling in *Daniel Youth* v *The King*[5] points out that the question of joint or several trials is always left to the discretion of the presiding Judge and where no request for a separate trial had been made it would not be possible for the Privy Council to override the trial Judge's discretion *Public Prosecutor* v *Venkata Reddi*[6] states that the correct procedure in regard to the proof of a confessional statement is for the police officer to record the statement of the accused in the first person and when he gives evidence, to say, that the accused made a confession, that he took it down and then refer to the statement, for the purpose of refreshing his memory. In *Malak Khan* v *King-Emperor*[7], the Judicial Committee points out that it is no doubt very important that as a general rule all Crown witnesses should be called to testify at the hearing of a prosecution but important as it is, there is no obligation compelling counsel for the prosecution to call all witnesses who speak to facts which the Crown desires to prove In re *Chenchuramayya*[8] holds that if there are two alternative sentences a Court should take into consideration all the circumstances of the case and award the sentence which in its view is more fitting In *Muthu Nadar*, In re[9], it is definitely decided that a sentence of imprisonment till the rising of the Court constitutes imprisonment within the meaning of the Code In *Madiga Chinna Obigadu*, In re[10], it is pointed out that section 102 of the Code relates only to formal searches under search-warrants issued under section 96 or 98 but not to emergencies where the search is conducted not for any specified object *Venugopala Mudaliar* v *Neelakanta Mudaliar*[11] holds that for the purposes of section 145 the possession of the tenant will be the possession of the landlord and the latter can be granted a declaration though the tenant is not a party The decision in *Arunachala Goundan* v *Chinnadorai*[12] states that the dispossessed person can be treated as in possession on the date of the preliminary order under section 145 only if he had been dispossessed within two months of that date The ruling in *Swaminathan*, In re[13], holds that routine complaints of new cases of embezzlements to the investigating officer cannot be considered as statements made by a witness in the course of the investigation of a charge within the meaning of section 162 In *Malak Khan* v. *The King-Emperor*[7], the Privy Council points out that section 165 does not apply where the articles are produced by the accused himself and the section is meant

1 (1945) 1 M L J 268
2 (1945) 2 M L J 563
3 (1945) 1 M L J 86 (P C)
4 (1945) 1 M L J 275
5 (1945) 2 M L J 578 (P C)
6. (1945) 1 M.L J 222
7. (1945) 2 M.L J. 486 (P.C.).
8 (1945) 2 M L J 547
9 (1945) 1 M L J 180
10 (1945) 2 M L J 249
11 (1945) 1 M L J 303
12 (1945) 1 M L J 210
13. (1945) 1 M L J 452.

to be used in cases where a search warrant would be made use of in the ordinary course but lack of time renders it impolitic to use it *Swaminathan*, In re[1], lays down that when once the Secretary to the Government under the orders of the Governor certifies that His Excellency has accorded sanction under section 197, that is a sufficient proof that the Governor has sanctioned the prosecution in the exercise of his individual judgment in the absence of any evidence to the contrary. *Kumariah Naicker* v. *Chinna Naicker*[2] recognises that the fact that a previous complaint was thrown out under section 203 is no bar to the entertainment of a second complaint In *Subbiah* v *Kesavulu*[3], it is laid down that section 253 does not require any reasons to be stated by the magistrate for the discharge and a mere order discharging the accused will be a final order. In *Subbai Goundan*, In re[4], it is pointed out that there is nothing in the Criminal Procedure Code or the Madras Children Act which places a case in which there are several accused and one of them is a "young person" outside the provisions of section 349 of the Code and hence the sub-magistrate should not convict any of the accused but should send them all to the competent magistrate. *Duraiswami Goundan*, In re[5], explains that the object of questioning the accused under section 342 is to give him an opportunity of explaining the circumstances that appear against him in the evidence and hence the Court should give not a summary of the whole evidence but should so summarise as to thereby draw the attention of the accused to the salient features of the prosecution case that seem to call for some explanation *Doraiswami Naidu*, In re[6], holds that an accused coming before a magistrate under section 380 can be treated only as a convicted person and it will not be competent to the magistrate to set aside the conviction already recorded by the referring magistrate. In *Lala Jairamdas* v *The King-Emperor*[7], the Judicial Committee points out that chapter 39 of the Code together with section 426 forms a complete and exhaustive statement of the powers of the High Court to grant bail and excludes the existence of any additional inherent power relating to the subject of bail. *Kandimalla Thirupelu*, In re[8], holds that under section 436 a Sessions Judge may direct further inquiry into the case of a person who has been discharged and under section 437 can order his commitment instead of directing a fresh inquiry but there is no provision in the Code enabling the Sessions Judge to take cognisance of the offence himself or to direct a magistrate to do so The ruling in *Marudai Pillai*, In re[9], lays down that a complaint outside section 476 cannot be filed by a civil, revenue or criminal Court under its inherent jurisdiction. In *Munuswami Pillai* v *Doraikannu Ammal*[10], it is decided that if subsequent to the passing of an order for maintenance in favour of a wife the parties live as husband and wife, the order must be regarded as having become ineffective The *Crown Prosecutor* v. *N S. Krishnan*[11] holds that although section 497 (5) can have no application to the case of an accused person who has been released on bail under section 498 the Court can under section 561-A discontinue an order granting bail which enured for a limited period only. *Public Prosecutor* v *Panesawara Rao*[12] points out that the offence punishable under section 409 of the Penal Code being one punishable with transportation for life, the accused on a conviction under that section cannot be dealt with under section 562 of the Criminal Procedure Code.

REGISTRATION —In *Chaturbhuj Singh* v *Govind Prasad Singh*[13], the Privy Council holds that a document takes effect according to its terms from the date thereof in the absence of anything in the document itself indicating the performance of any act as a condition precedent to the document taking effect *Duraiswami Reddi* v. *Angappa Reddi*[14] recognises that under section 47 of the Registration Act if there is a competition between registered documents relating to the same property the document executed first in order of time has priority over the other though the former document may not have been registered until after the latter. In *Nalla Goundan* v *Krishna-*

1 (1945) 1 M L J 452
2. (1945) 2 M L J 577
3. (1945) 1 M L J 287
4. (1945) 1 M L J 241
5. (1945) 2 M L J 455
6. (1945) 1 M L J 178
7. (1945) 2 M.L J. 40 (P C.).
8 (1945) 2 M L J 88
9. (1945) 2 M LJ 125.
10 (1945) 2 M.L J 408.
11 (1945) 1 M L.J 187.
12 (1945) 2 M L.J 575
13. (1945) 2 M.L .J. 519 (P C).
14. (1945) 1 M.L.J. 425.

swami Naicker[1], it is pointed out that section 74 (*b*) has reference only to the requirements of the Registration Act or of any statutory provision which the Legislature has said shall be regarded as being supplemental to the Registration Act, and hence non-compliance with the requirements of the Estates Land Act is not a valid ground for refusing registration

COURT FEES.—In *Venkatasubba Rao* v. *Bhujangayya*[2], it is laid down that a fiscal enactment like the Court Fees Act should be strictly construed and where there is any doubt the benefit of it should be given to the tax-payer *Sokkammal* v *Arunachalam Pillai*[3] rules that where a suit is for accounts the amount expected to be received need not be specified and it is sufficient to pay court-fee on the relief of accounting and to pay court-fees later on the amount found due, but where the suit is to surcharge and falsify and to recover specific sums, the stamp on the plaint should be on an *ad valorem* basis In *Ramanujam Pillai* v *Ramaswami Pillai*[4], it is decided that unless the plaintiff is a party to a particular document and cannot get the relief he seeks without avoiding the document it is not necessary for him to seek the cancellation of the document and any relief he may otherwise ask for on the basis that the document was not intended to be operative cannot be treated in substance and effect as a relief for cancellation within the meaning of section 7 (*iv*) A *Mutyalamma* v *Krishnamma*[5] decides that under section 13 the Court has no discretion and is bound to refund the court-fees when a remand is made on any of the grounds mentioned in Order 41 rule 23 of the Civil Procedure Code *Balagurumurthi Chettiar* v. *Muhammad Ismail*[6] holds that an order issued by a Court for the sale of property in its custody during the pendency of a suit is a "process" within the meaning of section 20

LIMITATION —In *Satyanarayana* v *Rama Rao*[7], it is held that the principle that symbolical delivery momentarily interrupts the possession of the judgment-debtor and thereby extends the period of limitation is equally applicable to persons deriving title from the judgment-debtor *Subba Reddi* v *Venkataramayya*[8] recognises incidentally that section 4 of the Limitation Act is quite independent of sections 19 and 20 In *Subba Rao* v *Pattabhiramayya*[9], it is held that in the case of a joint Hindu family, a suit to set aside an alienation, filed by the younger of two brothers within three years of his attaining majority would be barred by limitation if the elder brother who was the manager and an adult had failed to sue within three years of his attaining majority In *Ramachandra Jivaji* v *Laxman Shrinivasa*[10], the Privy Council points out that section 10 of the Limitation Act can have no application to a case where property is in the possession of a donee under a voidable transaction. *Hussain Ali* v *Baquir Ali*[11] holds that section 10 cannot apply to a suit by a co-heir to recover his share of the sale proceeds of the estate of a deceased Muslim, from the person to whom they had been handed over by the person who arranged the sale with instructions to distribute the money among the heirs in accordance with their respective interests, as the receipt of the sale proceeds for purposes of distribution among the heirs did not constitute an express trust In *Akkandi Chetty* v *Rethinagiri Chetty*[12], it is pointed out that where a mortgagor from whom a purchaser derived his liability to be sued was absent from British India, section 13 would apply and save the suit from being barred against the purchaser also. *Krishnaswami Iyer* v. *Ramakrishna Iyer*[13] lays down that a payment by cheque by the debtor to the creditor is a payment which satisfies the requirements of section 20 In *Venkatappayya* v *Venkatapayya*[14], it is pointed out that the amendment of section 20 by Act XVI of 1942 long after the institution of a suit cannot revive what was barred and unenforceable at that time *Palanichami Nadar* v *Governor-General in Council*[15] holds that for a suit against a railway company for non-delivery of goods consigned for transit, time under Article 31 begins to run from after the definite refusal or decla-

1 (1945) 2 M L J 133
2 (1945) 2 M L J 536
3 (1945) 2 M L J 460
4 (1945) 2 M L J. 582
5. (1945) 1 M L J 205
6 (1945) 1 M L J 320.
7 (1945) 2 M.L J 205
8. (1945) 1 M.L J 38.
9 (1945) 1 M L J 200
10 (1945) 1 M L.J 253 (P.C)
11 (1945) 2 M L J 422
12 (1945) 1 M L J 275
13 (1945) 2 M L J 202
14. (1945) 2 M L J 405
15. (1945) 2 M.L J 449

ration of inability to deliver by the responsible railway company *Perumal Reddiar* v *Suppiah Thevar*[1] recognises that Article 61 will govern a suit for reimbursement of money paid whether the claim was laid under section 69 or section 70 of the Contract Act *Hussain Ali* v *Baquir Ali*[2] holds that, under Article 62, the starting point is the date when the defendant received the money and not the date of the plaintiff's knowledge of it *R N Kapur* v *Travancore National and Quilon Bank, Ltd*[3], decides that where a customer is permitted to overdraw a current account and such account is sometimes in credit and sometimes in debit, the account is a "mutual, open and current account" to which Article 85 applies In *Ramchandra Jivaji* v *Laxman Shrinivas*[4], it is pointed out that where a transaction is sought to be avoided on the ground of undue influence Article 91 applies and time would run from the date of the knowledge, that is, the date of the document and not from that of the removal of the undue influence In *Venkataswami Chettiar* v *Ramalingam*[5], it is decided that where a mortgage bond provided that the mortgage money shall be payable "when required by you" or "whenever demanded" the amount becomes payable at once and limitation starts from the date of the bond *Periyannan* v *Ramaswami*[6] holds that where the application to set aside a sale is not filed within thirty days of the sale Article 166 will bar the petition though the latter is filed under section 47 of the Civil Procedure Code *Ambujammal* v *Singara Ammal*[7] holds that where Article 181, a specific article, is applicable, Article 182 cannot be invoked In *Thandavaraya Gramani* v *Arumugha Mudali*[8], it is held that even though an appeal is incompetent not in the sense that it was filed in the wrong forum but on the ground that no appeal lay, the order dismissing the appeal would give a fresh starting point under Article 182 (2) *Paras Reddi* v *Satyanarayanamurti*[9] holds that under Article 182 (4) also the starting point will be the date of the order on the application for amendment passed on appeal or on review, even as against persons who were not parties thereto In *Gopalaswami Mudaliar* v *Executive Officer, Tiruvarur Devasthanam*[10], it is pointed out that where there is no defect in the execution petition and the same is returned for compliance with certain particulars and the petition is re-presented without undue delay the order of the executing Court refusing to excuse the delay and dismissing the petition will be a final order within the meaning of Article 182 (5). *Annamalai Chettiar* v *Valliammai Achi*[11], is a pronouncement of the Privy Council on Article 182 which points out that to bring a case within clause 5 it must be shown that there was an application made in accordance with law to the proper Court either for execution or to take some step-in-aid and if there was such an application time begins to run from the date of the final order thereon The Privy Council further indicates that an application by way of an appeal to a Court of appeal to set aside an order of the subordinate Court raising an attachment ordered earlier is an application to take a step-in-aid The decision leaves open the point whether there could not be a step-in-aid if there was no application for execution then pending or whether a step-in-aid must be one in furtherance of execution and not merely one seeking to remove an obstruction to possible future execution. That to be a step-in-aid an application need not be in a pending execution application is the view taken by a Full Bench in *Ayi Goundan* v *Solai Goundan*[12] In *Seshagiri Row* v *Subbarami Reddi*[13], another Full Bench has laid down that for purposes of Article 182 (5) the fact that the application was not registered and numbered is immaterial and that the test is whether it was in accordance with law on the date of presentation, whether it was judicially considered, and whether a final order was passed thereon See also *Venkataratnam* v *Rama Kotayya*[14] In *Satyanarayana* v *Kajireddi*[15], it is pointed out that an execution petition filed with wrong number of the suit is not one in accordance with law It is also held that a prayer in an execution petition for the issue of a notice under Order 21, rule 21 is a step-in-aid.

1 (1945) 1 M L J 341
2 (1945) 2 M L J 422
3. (1945) 2 M L J 120
4. (1945) 1 M L J 253 (P.C)
5 (1945) 1 M L J 233 (F B)
6 (1945) 1 M L J 267
7 (1945) 2 M L J 444
8. (1945) 1 M.L J. 421
9 (1945) 1 M L J 39
10 (1945) 1 M L J 428
11 (1945) 2 M L J 224 (P C).
12 (1945) 1 M L J 47 (F B)
13 (1945) 1 M L J 270 (F.B)
14 (1945) 2 M L.J 152
15. (1945) 2 M.L J 427.